

REMARKS

Applicants have received and carefully reviewed the Office Action mailed June 10, 2010. Applicants respectfully traverse (and do not concede) all objections, rejections, and adverse assertions made by the Examiner. With this paper, claims 2-6 have been amended and claims 1 and 7-8 have been canceled without prejudice. Support for the amendments is found in the specification, claims, and drawings as originally filed. No new matter has been added. Claims 2-6 and 9-18 remain pending. Favorable consideration of the above amendments and the following remarks is respectfully requested.

Claim Rejections Under 35 U.S.C. §102

Claims 1-18 have been rejected under 35 U.S.C. §102(b) as being anticipated by Heaton et al. (WO 03/013268). Applicants respectfully traverse the rejection.

Claims 2-6 have been amended to be independent claims reciting a method for deodorizing excrement in a pet, improving sleep in a pet, improving sensibility in a pet, improving visual sense in a pet, and/or treating, improving or preventing diabetes or diabetic complications in a pet, comprising administering to the pet a pet food containing astaxanthin and/or an ester thereof. Heaton et al. do not appear to teach or suggest such methods. MPEP 2131 states, "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). ... "The identical invention must be shown in as complete detail as is contained in the ... claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Heaton et al. fail to do so. Instead, Heaton et al. appears to be directed towards reducing nucleic acid damage in animals. Heaton et al. appear to disclose vitamin E, vitamin C and a carotenoid may be added to an animal's diet to reduce nucleic acid damage. In the examples given, Heaton et al. appear to disclose beta-carotene as a carotenoid in combination with vitamin E and vitamin C, as capable of reducing nucleic acid damage. Nowhere do Heaton et al. appear to teach or suggest administering to the pet a pet food containing astaxanthin and/or an ester thereof to deodorize excrement in a

pet, improve sleep in a pet, improve sensibility in a pet, improve visual sense in a pet, and/or treat, improve or prevent diabetes or diabetic complications in a pet, as currently claimed.

Therefore, for at least these reasons, Heaton et al. do not appear to teach or suggest each and every element of the claims as required for an anticipation rejection. Further, there appears to be no motivation, suggestion, or other reason for one of ordinary skill in the art to modify Heaton et al. to achieve the method as claimed. Reconsideration and withdrawal of the rejection are respectfully requested. For similar reasons and others, Applicants submit that claims 9-18 are also in condition for allowance as they depend from one of claims 2-6 and add significant limitations to further distinguish them from the prior art.

Claims 1-7 and 9-13 have been rejected under 35 U.S.C. §102(b) as being anticipated by Lignell et al. (US 6,054,491). Applicants respectfully traverse the rejection.

As discussed above, claims 2-6 have been amended to be independent claims reciting a method for deodorizing excrement in a pet, improving sleep in a pet, improving sensibility in a pet, improving visual sense in a pet, and/or treating, improving or preventing diabetes or diabetic complications in a pet, comprising administering to the pet a pet food containing astaxanthin and/or an ester thereof. Lignell et al. do not appear to teach or suggest such methods. Instead, Lignell et al. appear to disclose the use of astaxanthin to improve breeding among production mammals (e.g. livestock). It appears that when sows are supplemented with astaxanthin, the performance is improved. For example, it appears that sows supplemented with astaxanthin gave birth to fewer stillborn piglets. Nowhere do Lignell et al. appear to teach or suggest administering to the pet a pet food containing astaxanthin and/or an ester thereof to deodorize excrement in a pet, improve sleep in a pet, improve sensibility in a pet, improve visual sense in a pet, and/or treat, improve or prevent diabetes or diabetic complications in a pet, as currently claimed.

Therefore, for at least these reasons, Lignell et al. do not appear to teach or suggest each and every element of the claims as required for an anticipation rejection. Further, there appears to be no motivation, suggestion, or other reason for one of ordinary skill in the art to modify Lignell et al. to achieve the method as claimed. Reconsideration

and withdrawal of the rejection are respectfully requested. For similar reasons and others, Applicants submit that claims 9-13 are also in condition for allowance as they depend from one of claims 2-6 and add significant limitations to further distinguish them from the prior art.

Claims 1-7 and 9-13 have been rejected under 35 U.S.C. §102(b) as being anticipated by Wadstrom et al. (WO 98/37874). Applicants respectfully traverse the rejection.

As discussed above, claims 2-6 have been amended to be independent claims reciting a method for deodorizing excrement in a pet, improving sleep in a pet, improving sensibility in a pet, improving visual sense in a pet, and/or treating, improving or preventing diabetes or diabetic complications in a pet, comprising administering to the pet a pet food containing astaxanthin and/or an ester thereof. Wadstrom et al. do not appear to teach or suggest such methods. Instead, Wadstrom et al. appear to disclose a method for treatment of inflammation of the gastrointestinal tract caused by *Helicobacter sp.*, particularly in humans. Wadstrom et al. appear to disclose a xanthophyll is mixed with a water soluble antioxidant along with other agents, such as a flavoring agent. It appears the mixture may then be delivered to the mammal requiring treatment. Nowhere do Wadstrom et al. appear to teach or suggest administering to the pet a pet food containing astaxanthin and/or an ester thereof to deodorize excrement in a pet, improve sleep in a pet, improve sensibility in a pet, improve visual sense in a pet, and/or treat, improve or prevent diabetes or diabetic complications in a pet, as currently claimed.

Therefore, for at least these reasons, Wadstrom et al. do not appear to teach or suggest each and every element of the claims as required for an anticipation rejection. Further, there appears to be no motivation, suggestion, or other reason for one of ordinary skill in the art to modify Wadstrom et al. to achieve the method as claimed. Reconsideration and withdrawal of the rejection are respectfully requested. For similar reasons and others, Applicants submit that claims 9-13 are also in condition for allowance as they depend from one of claims 2-6 and add significant limitations to further distinguish them from the prior art.

Claims 1-18 have been rejected under 35 U.S.C. §102(b) as being anticipated by Ito et al. (US 6,022,867). Applicants respectfully traverse the rejection.

As discussed above, claims 2-6 have been amended to be independent claims reciting a method for deodorizing excrement in a pet, improving sleep in a pet, improving sensibility in a pet, improving visual sense in a pet, and/or treating, improving or preventing diabetes or diabetic complications in a pet, comprising administering to the pet a pet food containing astaxanthin and/or an ester thereof. Ito et al. appear to disclose a method for administering vitamin E to an animal. It appears that in some instances an antioxidant may be mixed with the vitamin E composition to increase the effect of the vitamin E. Ito et al. appear to disclose that astaxanthin may be one such antioxidant. However, nowhere do Ito et al. appear to teach or suggest administering to the pet a pet food containing astaxanthin and/or an ester thereof to deodorize excrement in a pet, improve sleep in a pet, improve sensibility in a pet, improve visual sense in a pet, and/or treat, improve or prevent diabetes or diabetic complications in a pet, as currently claimed.

Therefore, for at least these reasons, Ito et al. do not appear to teach or suggest each and every element of the claims as required for an anticipation rejection. Further, there appears to be no motivation, suggestion, or other reason for one of ordinary skill in the art to modify Ito et al. to achieve the method as claimed. Reconsideration and withdrawal of the rejection are respectfully requested. For similar reasons and others, Applicants submit that claims 9-18 are also in condition for allowance as they depend from one of claims 2-6 and add significant limitations to further distinguish them from the prior art.

Claims 1-18 have been rejected under 35 U.S.C. §102(e) as being anticipated by Chew et al. (US 2004/0151761). Applicants respectfully traverse the rejection.

As discussed above, claims 2-6 have been amended to be independent claims reciting a method for deodorizing excrement in a pet, improving sleep in a pet, improving sensibility in a pet, improving visual sense in a pet, and/or treating, improving or preventing diabetes or diabetic complications in a pet, comprising administering to the pet a pet food containing astaxanthin and/or an ester thereof. Chew et al. appear to disclose a modified pet food including astaxanthin. Chew et al. appear to disclose that when fed such a modified food companion animals may exhibit an improved response to inflammation, better immunity or increased longevity. However, nowhere do Chew et al. appear to teach or suggest the specific methods of administering to the pet a pet food

containing astaxanthin and/or an ester thereof to deodorize excrement in a pet, improve sleep in a pet, improve sensibility in a pet, improve visual sense in a pet, and/or treat, improve or prevent diabetes or diabetic complications in a pet, as currently claimed.

Therefore, for at least these reasons, Chew et al. do not appear to teach or suggest each and every element of the claims as required for an anticipation rejection. Further, there appears to be no motivation, suggestion, or other reason for one of ordinary skill in the art to modify Chew et al. to achieve the method as claimed. Reconsideration and withdrawal of the rejection are respectfully requested. For similar reasons and others, Applicants submit that claims 9-18 are also in condition for allowance as they depend from one of claims 2-6 and add significant limitations to further distinguish them from the prior art.

Claims 1-18 have been rejected under 35 U.S.C. §102(e) as being anticipated by Levy et al. (US 2003/0104090). Applicants respectfully traverse the rejection.

As discussed above, claims 2-6 have been amended to be independent claims reciting a method for deodorizing excrement in a pet, improving sleep in a pet, improving sensibility in a pet, improving visual sense in a pet, and/or treating, improving or preventing diabetes or diabetic complications in a pet, comprising administering to the pet a pet food containing astaxanthin and/or an ester thereof. Levy et al. appear to disclose a method for improving the health of a human or non-human. Levy et al. appear to disclose the subject may be giving a supplement including a bixin compound, a strong antioxidant. It appears the supplementation of a diet with a bixin compound may provide an increased protective effect against free radicals. Levy et al. further appear to disclose the protective benefits obtained may be increased by the addition of a carotenoid compound. However, nowhere do Levy et al. appear to teach or suggest administering to the pet a pet food containing astaxanthin and/or an ester thereof to deodorize excrement in a pet, improve sleep in a pet, improve sensibility in a pet, improve visual sense in a pet, and/or treat, improve or prevent diabetes or diabetic complications in a pet, as currently claimed.

Therefore, for at least these reasons, Levy et al. do not appear to teach or suggest each and every element of the claims as required for an anticipation rejection. Further, there appears to be no motivation, suggestion, or other reason for one of ordinary skill in

the art to modify Levy et al. to achieve the method as claimed. Reconsideration and withdrawal of the rejection are respectfully requested. For similar reasons and others, Applicants submit that claims 9-18 are also in condition for allowance as they depend from one of claims 2-6 and add significant limitations to further distinguish them from the prior art.

Claims 1-18 have been rejected under 35 U.S.C. §102(e) as being anticipated by Zielinski (US 2003/0124230). Applicants respectfully traverse the rejection.

As discussed above, claims 2-6 have been amended to be independent claims reciting a method for deodorizing excrement in a pet, improving sleep in a pet, improving sensibility in a pet, improving visual sense in a pet, and/or treating, improving or preventing diabetes or diabetic complications in a pet, comprising administering to the pet a pet food containing astaxanthin and/or an ester thereof. Zielinski appears to disclose a method for treating bad breath in humans or pets. Zielinski appears to disclose bad breath may be treated by including a relatively high concentration of an active ingredient in a serving of food. The active ingredients appear to be selected from the following: silymarin, antioxidants, glutathione, a methyl donor group, a sulfur donor group, acetyl CoA, or glucuronic acid. Zielinski appears to disclose that the active ingredient is present in a quantity sufficient to reduce volatile sulfur compounds in one's breath by at least 10%. However, nowhere does Zielinski appear to teach or suggest administering to the pet a pet food containing astaxanthin and/or an ester thereof to deodorize excrement in a pet, improve sleep in a pet, improve sensibility in a pet, improve visual sense in a pet, and/or treat, improve or prevent diabetes or diabetic complications in a pet, as currently claimed.

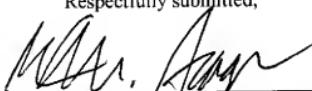
Therefore, for at least these reasons, Zielinski does not appear to teach or suggest each and every element of the claims as required for an anticipation rejection. Further, there appears to be no motivation, suggestion, or other reason for one of ordinary skill in the art to modify Zielinski to achieve the method as claimed. Reconsideration and withdrawal of the rejection are respectfully requested. For similar reasons and others, Applicants submit that claims 9-18 are also in condition for allowance as they depend from one of claims 2-6 and add significant limitations to further distinguish them from the prior art.

Conclusion

Reconsideration and further examination are respectfully requested. It is respectfully submitted that all pending claims are now in condition for allowance. Issuance of a Notice of Allowance in due course is requested. If a telephone conference might be of assistance, please contact the undersigned attorney at (612) 677-9050.

Respectfully submitted,

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Glenn M. Seager, Reg. No. 36,926
CROMPTON, SEAGER & TUFTE, LLC
1221 Nicollet Avenue, Suite 800
Minneapolis, Minnesota 55403-2420
Glenn.Seager@cstlaw.com
Tel: (612) 677-9050